



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2015-0992]

RIN 1625-AA00

Safety Zone; Grounded Vessel, Atlantic Ocean, Port St. Lucie, FL

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the waters of the Atlantic Ocean, east of the Port St. Lucie Inlet. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by a grounded vessel outside the Port St. Lucie Inlet. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Miami.

**DATES:** This rule is effective without actual notice from [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER] until November 15, 2015. For purposes of enforcement, actual notice will be used from October 27, 2015 through [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2015-0992 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email Petty Officer Benjamin R. Colbert, Sector Miami Waterways Management Division, U.S. Coast Guard; telephone 305-535-4317, email Benjamin.R.Colbert@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
E.O.	Executive order
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
Pub. L.	Public Law
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

In the evening of October 26, 2015, the Coast Guard was notified that a 60 foot motorized vessel was taking on water in the vicinity of the Port St. Lucie Inlet. Over the next several hours attempts to refloat the vessel were unsuccessful and the grounded vessel settled on the bottom. Local, state, and federal agencies are now engaged in emergency salvage operations.

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because this rule is being established in response to an ongoing emergency situation. Delay in publishing this rule would be impracticable because the grounded vessel poses an immediate risk public safety. In addition, any delay in the publishing of this rule

would be contrary to public interest. This rule is needed immediately in order to ensure safety of life on the navigable waters surrounding this ongoing emergency situation.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. For the same reasons discussed above, delay in issuing this rule would be both impracticable and contrary to public interest. The rule is in response to an emergent safety issue and is needed in order to ensure safety of life in the area around this emergency situation.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Miami (COTP) has determined that potential hazards associated with the grounded vessel will be a safety concern for anyone within a 100-yard radius of the vessel and equipment engaged in salvage operations. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone while emergency salvage operations take place.

### **IV. Discussion of the Rule**

This rule establishes a safety zone from October 27, 2015 through November 15, 2015. COTP may cease enforcement of the zone if emergency salvage operations end before November 15, 2015. The safety zone will cover all navigable waters within 100 yards of vessels and machinery being used by personnel to conduct emergency salvage operations. The duration of the zone is intended to protect personnel, vessels, and the marine environment in these navigable waters while emergency salvage operations are conducted. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and executive orders (E.O.s) related to rulemaking. Below we summarize our analyses based on a number of these statutes and E.O.s, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

E.O.s 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under E.O. 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, and duration. Vessel traffic will be able to safely transit around this safety zone which will impact a small designated area of the Atlantic Ocean for a limited duration during emergency salvage operations. Moreover, the Coast Guard will issue Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone and the rule allows vessels to seek permission to enter the zone.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small

entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under E.O. 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We

have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in E.O. 13132.

Also, this rule does not have tribal implications under E.O. 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section above.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves an emergency safety zone implemented to protect persons and vessels in the vicinity of a grounded vessel. It is categorically excluded from further review under paragraph 34(g) of Figure 2-1 of the Commandant

Instruction. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

#### **PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5;

Department of Homeland Security Delegation No. 0170.1.

2. Add temporary § 165.T07-0992 to read as follows:

§ 165.T07-0992 Safety Zone; Grounded Vessel, Atlantic Ocean; Port St. Lucie, FL.

(a) Regulated area. The following regulated area is a safety zone. All waters of the Atlantic Ocean located east of the Port St. Lucie Inlet within 100 yards of the grounded vessel located at 27°9'55"N, 080°10'36"W and all vessels and machinery assisting in emergency salvage operations. All coordinates are North American Datum 1983.

(b) Definition. The term “designated representative” means Coast Guard Patrol

Commanders, including Coast Guard coxswains, petty officers, and other officers operating Coast Guard vessels, and Federal, state, and local officers designated by or assisting the Captain of the Port Miami in the enforcement of the regulated area.

(c) Regulations. (1) Participants and vessels are prohibited from entering, transiting through, anchoring in, or remaining within the regulated area unless authorized by Captain of the Port Miami or a designated representative.

(2) Persons and vessels may request authorization to enter, transit through, anchor in, or remain within the regulated area by contacting the Captain of the Port Miami by telephone at 305-535-4472, or a designated representative via VHF radio on channel 16. If authorization is granted by the Captain of the Port Miami or a designated representative, all persons and vessels receiving such authorization must comply with the instructions of the Captain of the Port Miami or a designated representative.

(d) Effective date. This rule will be effective from October 27, 2015 to November 15, 2015 and will be enforced with actual notice while emergency salvage operations are ongoing.

Dated: October 27, 2015.

M. C. Long,  
Captain, U.S. Coast Guard,  
Acting Captain of the Port Miami.  
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